

August 4, 2008

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Silicon Metal from the People's Republic of China: Issues and  
Decision Memorandum for the Final Results of the 2006-2007  
Antidumping Duty Administrative Review

**SUMMARY:**

We have analyzed the case brief submitted by Globe Metallurgical Inc. ("Petitioner") in the 2006-2007 administrative review of the antidumping duty order on Silicon Metal from the People's Republic of China ("PRC"). As a result of our analysis, we have not made changes to Silicon Metal From The People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12378 (March 7, 2008) ("Preliminary Results").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments.

**Case Issues:**

Comment 1: No-Shipment Response By Ferro-Alliages et Mineraux Inc.  
Comment 2: Treatment of Coldstone Metals Inc.

**Background:**

The merchandise covered by the order is silicon metal, as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is June 1, 2006, through May 31, 2007. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On April 8, 2008, Petitioner filed its case brief ("Petitioner Case Brief"). No other comments were submitted by interested parties. On June 12, 2008, we

held public and closed hearings, and the transcripts for these hearings were placed on the record on June 19, 2008.

## **Discussion of the Issues**

### **Comment 1: No-Shipment Response By Ferro Alliages et Mineraux Inc.**

Petitioner states that the Department needs to determine whether the silicon metal that Ferro-Alliages et Mineraux Inc. (“Ferro-Alliages”) shipped to the United States during the POR originated in China. Petitioner argues that record evidence that it submitted demonstrates that Ferro-Alliages: (1) is not a Canadian producer of silicon metal; (2) instead, is a reseller, blender, and packager of various ferroalloy products; and (3) imported silicon metal from China into Canada during the POR. In view of this, Petitioner states, the Department must investigate whether Ferro-Alliages accurately reported the country of origin of the silicon metal that it shipped to the United States. See Petitioner Case Brief at 1.

Petitioner states that the Department has a statutory obligation to ensure that antidumping duties are assessed on all entries of subject merchandise during the POR. Petitioner asserts that this obligation applies equally to merchandise transshipped through a third country to the United States and to merchandise that has undergone further processing or assembly in a third country. Petitioner argues that the Department has an obligation to conduct an investigation necessary to perform these statutory responsibilities, and cites to Rhone-Poulenc, Inc. v. United States, 927 F. Supp. 451, 456-57 (CIT 1996), where the case was remanded as the Department had failed to obtain the information required to value certain by-products. Petitioner further states that in Bomont Indus. v. United States, 718 F. Supp. 958 at 964 (CIT 1989) (“Bomont”), the CIT remanded the case to the Department for the Department’s “failure adequately to investigate alleged transshipments of subject merchandise through a third country.” See Petitioner Case Brief at 8. Petitioner states that the Department should not have relied on U.S. Customs and Border Protection (“CBP”) data to corroborate the country of origin of the silicon metal that Ferro-Alliages shipped to the United States, as it states that if the origin of the silicon metal was misidentified, the imports would be reported in the CBP data as Canadian-origin, not Chinese-origin, merchandise.

Petitioner states that in Certain Tissue Paper from the People’s Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 17477, 17479 (April 9, 2007) (“Tissue Paper AR 1”), the Department confirmed a respondent’s no-shipment claims by issuing supplemental questionnaires, conducting an analysis of the issues and a verification of the company’s responses. Following Tissue Paper AR 1, Petitioner states that the Department should issue a supplemental questionnaire to Ferro-Alliages and require it to provide documentation to establish the origin of the silicon metal that it shipped to the United States. See Petitioner Case Brief at 12.

### **Department’s Position:**

We disagree with Petitioner that the Department is obligated, with respect to Ferro-Alliages’ no shipment claim, to seek additional information from Ferro-Alliages, or to investigate alleged transshipment in the context of this administrative review. With respect to the request by Petitioner to issue additional questionnaires to Ferro-Alliages, we note that, according to Ferro-

Alliages' submission, which is corroborated by CBP data, Ferro-Alliages did not export subject merchandise to the United States during the POR. When the Department seeks to corroborate no-shipment responses, normally it does so by checking CBP data. For this review, CBP data indicate that Ferro-Alliages' shipments of silicon metal to the United States were of non-PRC origin.

Regarding Petitioner's reference to Bomont, we disagree with Petitioner's assertion that Bomont obligates the Department to investigate all transshipment claims in the context of an administrative review. We note that in Bomont, the Department was conducting an investigation of a mandatory respondent. The investigation at issue in Bomont was initiated, in part, because of allegations of transshipment. See Bomont, at 963, where the Court noted that "{i}n the notice of initiation of its investigation, the ITA referred specifically to the allegations of transshipment in finding that the petition met the requirements of 19 USC §1673a." Id., at 964. The Court issued a remand in Bomont, as it found that if the transshipment allegations were a sufficient basis, in part, to justify initiation of the investigation, such allegations should have been investigated and verified, pursuant to section 351.307(b)(1)(i) of the Department's regulations. Id. Thus, the Court did not remand Bomont solely because the Department did not investigate alleged transshipment. Rather, the Court took notice of the fact that the Department itself had given weight to the transshipment allegations by taking them into account at initiation, and was thus obligated to verify the allegations.

In the instant case, however, the Department did not initiate a review of Ferro-Alliages based upon allegations of transshipment. Rather, the review was initiated solely because Petitioner filed a timely request for an administrative review of Ferro-Alliages' exports of subject merchandise. As noted above, the Department issued a Q&V questionnaire to Ferro-Alliages and corroborated its no-shipment response in the same manner that it would corroborate any no-shipment response in an administrative review. Absent additional evidence demonstrating that transshipment is occurring, the Department has determined that Ferro-Alliages' no-shipment response has been corroborated, for purposes of this administrative review.

With respect to Petitioner's reliance on Tissue Paper AR 1 to support its position that the Department is obligated to issue supplemental questionnaires and conduct additional research and/or conduct verification when faced with a no-shipment claim, we disagree. The facts presented in each administrative review are evaluated independently, and the Department has the discretion to determine whether additional supplemental questionnaires are warranted and whether or not to conduct verification based on the facts of any particular segment of each administrative review.<sup>1</sup> Thus, the fact that the Department undertook additional steps to investigate a no-shipment claim in another administrative review does not require that the Department take those same steps in every administrative review.

In the instant case, Ferro-Alliages reported that it had no shipments, which is corroborated by CBP data. Furthermore, no other evidence exists on the record which demonstrates that Ferro-Alliages exported PRC-origin silicon metal to the U.S. during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to Ferro-Alliages.

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<sup>1</sup> See 19 CFR 351.307(b)(1)(iv) (stating that the Department will conduct a verification in an administrative review "if the Secretary decides that good cause for verification exists.")

## **Comment 2: Treatment of Coldstone Metals Inc.**

Petitioner argues that the Department should apply adverse facts available (“AFA”) to Coldstone Metals Inc. (“Coldstone”) because it failed to respond to the Department’s August 24, 2007, quantity and value (“Q&V”) questionnaire. Petitioner states that Coldstone received the August 24, 2007, Q&V questionnaire, and was sent a “second chance” letter on September 17, 2007. Petitioner argues that although Coldstone moved to a new address after August 24, 2007 and never received the second chance letter, the Department should still apply AFA because Coldstone did receive the original Q&V letter and never responded to the Department. Rescinding the review for Coldstone, Petitioner asserts, would reward it for its failure to respond.

### **Department’s Position:**

We disagree with Petitioner. Under section 782(d) of the Act, if the Department finds that a response to a request for information is deficient, the Department shall inform the party of the nature of the deficiency, and “provide that person with an opportunity to remedy or explain the deficiency. . .” In the instant case, although the Department provided Coldstone with an additional opportunity on September 17, 2007, to submit a Q&V response, the company had subsequently moved to a different address and could not be located. Thus, we find that we cannot penalize Coldstone for not responding to the Department’s second Q&V letter, as the Department was unable to inform the party of the nature of the deficiency on the record. Therefore, the Department is rescinding the review with respect to Coldstone, in accordance with our practice. *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65083 (November 7, 2006).

### **RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review in the Federal Register.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date